



## INTERIOR BOARD OF INDIAN APPEALS

Estate of Leonard (Raymond) Cooper

7 IBIA 5 (01/11/1978)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

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STATE OF LEONARD (RAYMOND) COOPER

IBIA 77-49

Decided January 11, 1978

Petition to reopen.

Granted.

1. Indian Probate: Reopening: Generally

In order to justify reopening of an estate that has been closed in excess of the 3-year limitation found in 43 CFR 4.242(h) three elements must generally be satisfied. First, it must appear that a manifest injustice will likely prevail if a petition for reopening is denied. Secondly, it must be demonstrated that the delay in requesting relief was not occasioned by the lack of diligence on the part of the petitioner. Thirdly, there must exist a possibility for correction of the manifest injustice.

APPEARANCES: Rodney B. Lewis, Esq., for Agnes Snowball Mendosa (Mrs. Agnes Diaz).

## OPINION BY CHIEF ADMINISTRATIVE JUDGE WILSON

The above-entitled matter comes before the Board on a petition to reopen filed by Agnes Snowball Mendosa, hereinafter referred to as petitioner, with Administrative Law Judge William J. Truswell on June 17, 1977.

The estate having been closed since November 18, 1955, the petition was properly referred to the Board by Judge Truswell for disposition pursuant to 43 CFR 4.242(h).

The petitioner in support of her petition alleges that she was a minor at the time of the hearing on the estate and had no notice

thereof. Moreover, she alleges that her interest in the estate was not protected and thereby resulting in her being omitted as an heir thereto. In further support of her petition, the petitioner contends that she was not dilatory in pursuing her claim since she only recently discovered the alleged relationship to the decedent through an examination of her birth certificate, and that there exists a possibility to correct manifest injustice by reopening the estate and granting a new hearing in the matter.

[1] In order to justify the reopening of an estate that has been closed in excess of the 3-year limitation found in 43 CFR 4.242(h) three elements must generally be satisfied. First, it must appear that a manifest injustice will likely prevail if a petition for reopening is denied. Secondly, it must be demonstrated that the delay in requesting relief was not occasioned by the lack of diligence on the part of the petitioner. Thirdly, there must exist a possibility for correction of the manifest injustice. Estate of Peter Feather Earring Cleveland, 6 IBIA 44, March 30, 1977.

Applying the foregoing criteria to the instant case we find that the petitioner has substantially satisfied the requirements so as to justify granting her petition to reopen.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition of Agnes Snowball Mendosa (Mrs. Agnes Diaz) dated June 17, 1977, is GRANTED and the matter is REMANDED to Administrative Law Judge William J. Truswell's successor for further proceedings to determine whether or not the petitioner is entitled to share in the estate in the capacity alleged.

Done at Arlington, Virginia.

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//original signed  
Alexander H. Wilson  
Chief Administrative Judge

I concur:

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//original signed  
Mitchell J. Sabagh  
Administrative Judge